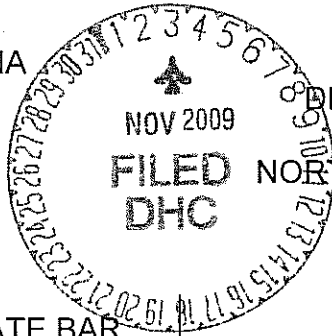


STATE OF NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING
COMMISSION
NORTH CAROLINA STATE BAR
09 DHC 13

THE NORTH CAROLINA STATE BAR,

Plaintiff,

vs.

JANET P. REED, Attorney

Defendant.

ANSWER TO AMENDED COMPLAINT

NOW COMES the defendant, Janet P. Reed, through counsel, answering the Amended Complaint of the plaintiff, alleges and says:

1. The allegations contained in paragraph 1 of plaintiff's Complaint are admitted.
2. The allegations contained in paragraph 2 of plaintiff's Complaint are admitted.
3. The allegations contained in paragraph 1 of plaintiff's Complaint are admitted.

FIRST CLAIM FOR RELIEF

4. The allegations contained in paragraph 4 of plaintiff's Complaint are admitted.
5. The allegations contained in paragraph 5 of plaintiff's Complaint are admitted.
6. The allegations contained in paragraph 6 of plaintiff's Complaint are admitted.
7. The allegations contained in paragraph 7 of plaintiff's Complaint are admitted. In addition, the District Attorney agreed that he would not object to the entry of a Prayer for Judgment Continued.

8. The defendant is without sufficient information with which to form a belief as to the truth of the allegations contained in paragraph 8 and said allegations are therefore denied.
9. The defendant is without sufficient information with which to form a belief as to the truth of the allegations contained in paragraph 9 and said allegations are therefore denied. However, said cases appeared as docket item number 27 on the district court calendar for February 20, 2008.
10. The allegations contained in paragraph 10 of plaintiff's Complaint are admitted. However, the document did not contain Mr. Silva's agreement not to object to a prayer for judgment continued.
11. The allegations contained in paragraph 11 of plaintiff's Complaint are admitted.
12. The allegations contained in paragraph 12 of plaintiff's Complaint are admitted.
13. The allegations contained in paragraph 13 of plaintiff's Complaint are admitted. Defendant denies any allegations that she knew no other charges to be added.
14. The allegations contained in paragraph 14 of plaintiff's Complaint are admitted.
15. The defendant is without sufficient information with which to form a belief as to the truth of the allegations contained in paragraph 15 and said allegations are therefore denied.
16. The allegations contained in paragraph 16 of plaintiff's Complaint are admitted.
17. It is admitted that the defendant included file number "06 CR 703796" to the plea agreement form before she had an opportunity to discuss this matter with District Attorney, Matthew Silva.
18. The allegations contained in paragraph 18 of plaintiff's Complaint are admitted.
19. It is admitted that the defendant added file number 06 CR703796 to the plea agreement after she received the same from Mr. Silva and that she had not obtained his approval prior to adding this entry to the agreement. Defendant is without sufficient information with which to form a belief as to the truth of the allegations of the remaining allegations contained in

paragraph 19, and said allegations are therefore denied.

20. The allegations contained in paragraph 20 of plaintiff's Complaint are admitted.
21. The allegations contained in paragraph 21 of plaintiff's Complaint are admitted.
22. The allegations contained in paragraph 22 of plaintiff's Complaint are admitted.
23. The allegations contained in paragraph 23 of plaintiff's Complaint are admitted.
24. The allegations contained in paragraph 24 of plaintiff's Complaint are admitted.
25. The allegations contained in paragraph 25 and 25(a) of plaintiff's Complaint are denied.

THEREFORE, having answered the First Claim for Relief, the defendant denies that she knowingly and intentionally violated any Rules of Professional Conduct.

SECOND CLAIM FOR RELIEF

26. Defendant incorporates paragraphs 1 through 25 of her Answer as if fully set out herein in response to the allegations in paragraph 26.
27. The allegations contained in paragraph 27 of plaintiff's Complaint are admitted.
28. The allegations contained in paragraph 28 of plaintiff's Complaint are admitted.
29. The allegations contained in paragraph 29 of plaintiff's Complaint are admitted.
30. The allegations contained in paragraph 30 of plaintiff's Complaint are admitted.
31. The allegations contained in paragraph 31 of plaintiff's Complaint are admitted.
32. The allegations contained in paragraph 32 of plaintiff's Complaint are admitted. However, defendant believes that in relation to temporary issues, this was not always the practice in Onslow County.

33. The allegations contained in paragraph 33 of plaintiff's Complaint are admitted. Further, that the mandatory custody mediation program is for contested custody issues which require that custody mediation be held prior to the hearing of those issues.
34. The allegations contained in paragraph 34 of plaintiff's Complaint are admitted.
35. Defendant admits that the Motion incorrectly stated that Blakeney lived more than fifty miles from the court, which entry was a clerical mistake.
36. The allegations contained in paragraph 36 of plaintiff's Complaint are admitted. Further, as the defendant understood that the statement referred to Erica Blakeney, Bobby Blakeney's wife being unwilling to participate in any meaningful contact between Bobby Blakeney and the minor child.
37. The allegations contained in paragraph 37 of plaintiff's Complaint are denied.
38. The allegations contained in paragraph 38 and 38(a) of plaintiff's Complaint are denied.

THEREFORE, having answered the Second Claim for Relief, the defendant denies that she knowingly and intentionally violated any Rules of Professional Conduct.

THIRD CLAIM FOR RELIEF

39. Defendant incorporates paragraphs 1 through 38 of her Answer as if fully set out herein in response to the allegations in paragraph 39.
40. The allegations contained in paragraph 40 of plaintiff's Complaint are admitted.
41. The allegations contained in paragraph 41 of plaintiff's Complaint are admitted.
42. The allegations contained in paragraph 42 of plaintiff's Complaint are admitted.
43. The allegations contained in paragraph 43 of plaintiff's Complaint are admitted. However, defendant thereafter advised through a fax dated March 23, 2009 that this date would not be appropriate.

44. It is denied that by March 25, 2009 that April 8, 2009 was the agreed upon date for the deposition. The remaining allegations contained in paragraph 44 are denied.
45. The allegations contained in paragraph 45 of plaintiff's Complaint are admitted.
46. The allegations contained in paragraph 46 of plaintiff's Complaint are admitted.
47. The allegations contained in paragraph 47 of plaintiff's Complaint are admitted.
48. The allegations contained in paragraph 48 of plaintiff's Complaint are admitted.
49. The allegations contained in paragraph 49 of plaintiff's Complaint are admitted.
50. The allegations contained in paragraph 50 of plaintiff's Complaint are admitted.
51. It is admitted that a Motion to Terminate was filed on April 8, 2009.
52. The allegations contained in paragraph 52 of plaintiff's Complaint are admitted.
53. It is admitted that a hearing was held on April 30, 2009 and attached hereto as Exhibit "A" is a copy of the transcript of the hearing, the terms of which speak for itself.
54. The allegations contained in paragraph 54 of plaintiff's Complaint are admitted.

THEREFORE, having answered the Third Claim for Relief, the defendant denies that she knowingly and intentionally violated any Rules of Professional Conduct.

FOURTH CLAIM FOR RELIEF

55. Defendant incorporates paragraphs 1 through 54 of her Answer as if fully set out herein in response to the allegations in paragraph 55.
56. The allegations contained in paragraph 56 of plaintiff's Complaint are admitted.

57. The allegations contained in paragraph 57 of plaintiff's Complaint are admitted.

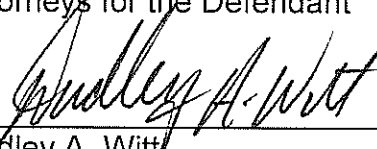
58. The allegations contained in paragraph 58 of plaintiff's Complaint are denied.

THEREFORE, having answered the Fourth Claim for Relief, the defendant denies that she knowingly and intentionally violated any Rules of Professional Conduct.

WHEREFORE, having answered the like numbered paragraphs of the plaintiff, the defendant respectfully requests that the Complaint of the plaintiff be dismissed, with prejudice, and that the North Carolina State Bar be denied any disciplinary action as a result of the allegations contained in the Complaint.

This the 30th day of October, 2009.

CRUMPLER FREEDMAN PARKER & WITT
Attorneys for the Defendant



Dudley A. Witt
State Bar #: 11155
301 North Main Street, Suite 700
Winston-Salem, NC 27101
(336) 725-1304

STATE OF NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING
COMMISSION
NORTH CAROLINA STATE BAR
09 DHC 13

THE NORTH CAROLINA STATE BAR,

Plaintiff,

vs.

JANET P. REED, Attorney

Defendant.

CERTIFICATE OF SERVICE

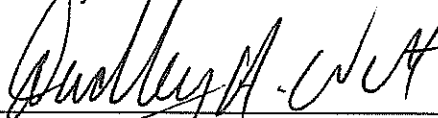
The undersigned hereby certifies that he is an attorney at law licensed to practice in the State of North Carolina, is attorney for the defendant and is a person of such age and discretion as to be competent to serve process.

That on the 30th day of October, 2009, he served a copy of the attached **ANSWER TO AMENDED COMPLAINT** by placing said copy in a postpaid envelope addressed to the person hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and its contents in the United States Mail at Winston-Salem, North Carolina.

ADDRESSEE: Mr. William N. Farrell
North Carolina State Bar
208 Fayetteville Street
Raleigh, NC 27601

CRUMPLER FREEDMAN PARKER & WITT

Attorneys for the Defendant



Dudley A. Witt
301 North Main Street, Suite 700
Winston-Salem, NC 27101
(336) 725-1304

EXHIBIT “A”

1 NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

2 ONSLOW COUNTY

DISTRICT COURT DIVISION

3 FILE NO: 08-CVD-4036

4
5 KRISTIE K. OGNIIEWSKI,)

6 Plaintiff,)

7 Vs.)

T R A N S C R I P T

8 RICHARD OGNIIEWSKI,)

9 Defendant.)

10 _____)

11
12 BEFORE, the Honorable JOYCE A. HAMILTON, Judge
13 Presiding, commencing April 30, 2009, with calendar call on
14 April 14, 2009 and April 20, 2009.

15 APPEARANCES:

16 TIMOTHY OSWALT, Attorney at Law, on behalf of
17 Plaintiff.

18 JANET REED, Attorney at Law, on behalf of the
19 Defendant.

20
21
22
23
24
25 DATE RECEIVED: 07/16/09 DATE DELIVERED: 09/08/09

I N D E X

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PROCEEDINGS

(APRIL 14, 2009—Calendar Call)

COURT: Folks, we have a Motion Calendar but I think the Judge will call that Monday morning since notice would not be to some of these folks. Were there other cases that were calendared but I have not called for some reason, anybody know of any? Anyone here on a case who is wondering what is going on with your case.

(NOTHING ON OGNIIEWSKY SCHEDULED AT THIS CALENDAR CALL—04/14/09)

(APRIL 20, 2009—Motions Calendar Call)

COURT: I can't say this name, so I'll spell it O G N I
E—

OSWALT: Ogniewski.

COURT: Thank you. Okay, same attorneys. All right, it says all pending Motions, what are they?

REED: They are dealing with our Motion to Continue. There is uh, a Motion to Compel, there is also a Motion to Terminate a Deposition, and I believe there's a Motion for Sanctions.

COURT: Who's Motion to Continue?

REED: That's my, Your Honor.

COURT: So you've moved to continue everything?

REED: No, no, no, continue the Deposition.

COURT: Continue the Deposition. Okay, there's a Motion to Continue the Deposition, there's uh, what is this pretrial

1 Motion?

2 REED: Well it's just for the Court to determine as far
3 as how the Discovery and all should go before the Deposition.

4 COURT: Is it a Motion to get compel Discovery that
5 hasn't-

6 REED: No, Your Honor-

7 COURT: What's the nature of the Motion?

8 REED: In other words, Your Honor, to, I have already
9 requested uh, I've already done Discovery for him and provided
10 it to him, he's not provided any Discover to me other than-

11 COURT: Well is it a request for sanctions, or what?

12 REED: --(inaudible), Your Honor, what it is, Your
13 Honor, is I'm asking that the Court, in part of my Motion, based
14 on things as far as the Discovery process.

15 COURT: Your time estimate on that is two hours?

16 OSWALT: Judge-

17 REED: Yes, Your Honor.

18 COURT: Mr. Oswalt?

19 OSWALT: Judge, I think you should probably review this
20 file, there's some procedural issues as far as notice to all of
21 this, as far as I think a calendar request was filed prior to
22 the Motion, uh, that's the order that I've got it in, it's uh,
23 it-

24 COURT: Well, what are you ready to go forward on?

25 OSWALT: Judge, I can go, I filed the Motion for Sanctions

1 against Ms. Reed for walking out of a deposition last week. I,
2 uh I hadn't set that on in front of you, I had set it on in
3 front of another Judge. I would prefer it be set on in front of
4 the Judge that heard her Motion to continue the deposition and
5 denied that Motion and then after that was denied, she walked
6 out of it any way. Uhm, I'll be in a position to go forward the
7 second week on her Motion to Compel, and her Motion uh, I'm not
8 understanding everything that's she's filed, but I'm assuming
9 the Motion to Compel, there's a Motion to terminate a deposition
10 that took place a week and a half ago, and I don't understand
11 the nature of--

12 COURT: Sir, you say that another Judge denied her Motion
13 to continue the Deposition?

14 OSWALT: Judge, she set a Motion to continue a deposition
15 on the day the Deposition was set. That Judge refused to hear
16 that Motion. Uh--

17 COURT: So the Motion was not heard?

18 OSWALT: Right, it was, he just refused to hear it because
19 there wasn't timely notice. And then after she walked out of
20 the Deposition, the next day she filed this Motion to terminate
21 the deposition.

22 REED: Your Honor, that's not--

23 COURT: Well, whatever there is in this file that needs
24 to be heard this week or next week, when can you all be
25 available for me to take a look at it and see where we're going

1 to then?

2 OSWALT: Judge, I'm available all next week. This week,
3 I'm scheduled to be out Thursday and Friday and I got some
4 Superior Court matters I have to deal with today, tomorrow, and
5 I anticipate as a result of the Superior Court, it's our
6 Administrative Court this week, but I, a local Judge, I may have
7 some stuff on Wednesday, so I, again, if you have time next
8 week. I'll be available.

9 COURT: If everything goes, next week that I've got down
10 here, and takes the amount of time that it's on the calendar
11 for-

12 OSWALT: Judge, I would consider asking if the first, I
13 have the first matter up Thursday.

14 COURT: Yeah, you do.

15 OSWALT: Yes ma'am, and my understanding is the uh,
16 attorney-

17 COURT: Well it looks to me like Thursday afternoon we
18 might be able to do something with uh-

19 OSWALT: Yes ma'am, I don't think my case Thursday is
20 going to take that, I don't think one of the parties is going to
21 show up.

22 COURT: Well, then we have the Jones case. Is anybody
23 here on the Jones case that is set next Thursday? That's half a
24 day so-

25 McNAMARA: Yeah, that will probably be a visitation Order at

1 this point, Your Honor, it was a custody case but I think we're
2 going to resolve the visitation, so it may not take as long as
3 we anticipated.

4 COURT: Okay, well, why don't we set this for 2:00, next
5 Thursday, does that work, Ms. Reed and Mr. Oswalt, with you?

6 OSWALT: Yes ma'am.

7 COURT: Okay, so number 20 is on at 2:00. And I'll look
8 at the file.

9 APRIL 30, 2009

10 COURT: I have looked at the file in this case and I
11 actually made myself a note when I did calendar call last week
12 that I needed to review the file. I think that was because at
13 Calendar Call, I was really having difficulty determining what
14 the issues were. But I noted on the calendar, this is an
15 understood that this might be something we might be able to take
16 care of this afternoon, so, give me a minute. And this is
17 number 20 on the Motions calendar is my recollection. I only
18 remember from the notes that I wrote was that there was some
19 kind of Motion for Sanctions that Mr. Oswalt mentioned having
20 against Ms. Reed. There was a Motion to Compel Discovery I
21 think, something about a deposition, I don't know. Who
22 calendared this and what's it calendared for?

23 REED: I calendared this, Your Honor for several, I
24 calendared for all pending motions.

25 COURT: Well I need to have specifics because that could

1 be like 2000 motions.

2 REED: What is listed is there was a Motion to Continue,
3 there's a pretrial-

4 COURT: Whose Motion to Continue?

5 REED: It was mine.

6 COURT: To continue, to continue what?

7 REED: Uh the deposition.

8 COURT: Okay so there's a Motion to Continue-

9 REED: And there's also-

10 COURT: Deposition and you represent, I'm sorry,
11 Plaintiff?

12 REED: The Defendant.

13 COURT: So these are Defendant's Motions. All right so
14 you calendared that to be heard but the deposition was
15 scheduled.

16 REED: Yes, Your Honor.

17 COURT: Did it take place?

18 REED: It did Your Honor to uhm-

19 COURT: Is that issue moot?

20 REED: Well, I wouldn't say moot Your Honor. Uhm the
21 deposition was, was held, however during the deposition, this is
22 what the Motion for Sanctions is about is that I stopped the-

23 COURT: Okay, well it sounds like the Motion to Continue
24 is probably moved but might, the fact that you've made a Motion
25 to Continue could be relevant in my hearing at the Motion for

1 Sanctions perhaps.

2 OSWALT: Judge, I'm sorry to interrupt but the Motions for
3 Sanctions is not the problem.

4 COURT: Okay.

5 OSWALT: I had, I had filed that-

6 COURT: And it's Plaintiff's Motion for Sanctions, so
7 it's not in front of me.

8 OSWALT: That was set in front of Judge Seaton. I had that
9 matter continued uh because some of the issues may resolve
10 themselves as a result of her Motion for, to compel and her
11 Motion to Terminate the Deposition. So based upon the results
12 of today's hearing, I'll determine whether or not to move
13 forward with the Motion for Sanctions.

14 COURT: All right, so the Motion for Sanctions is not in
15 front of me and it sounds like the Motion to Continue the
16 Deposition isn't because the deposition took place.

17 REED: It, it did, Your Honor, however-

18 COURT: What are the other Motions?

19 REED: The other issue, well going back now to the
20 Motion to Continue the Deposition.

21 COURT: Okay.

22 REED: Your Honor, I scheduled that motion that was
23 supposed to of been heard on April the 8th in front of Judge
24 Foy. And at that time uh Attorney Oswalt asked the Judge to
25 continue the Motion knowing that we had the deposition scheduled

1 for two o'clock on April the 8th. I was trying to bring it
2 before the Court's attention so that we could deal with these
3 matters, and that's why it's been continued. And that's why
4 I've calendared it because he asked to have the motion
5 continued. So it wasn't dismissed, it wasn't denied, it was just
6 continued. There's also the motion, my Motion to Compel, Your
7 Honor, I'm withdrawing that.

8 COURT: Okay so you had a Motion to Compel that you're
9 withdrawing?

10 REED: Yes, Your Honor.

11 COURT: Okay.

12 REED: There's also a Motion to Compel Inventory; that's
13 the ED affidavit.

14 COURT: There are two Motions to Compel?

15 REED: No, just the first, just the one dealing with the
16 discovery that we had not received.

17 COURT: Okay so the Motion to Compel Discovery you're
18 withdrawing that?

19 REED: Yes, Your Honor.

20 COURT: All right.

21 REED: The Motion to Compel the Inventory, we'd like to
22 have that heard.

23 COURT: That is Defendant's Motion to Compel Inventory?

24 REED: Yes, Your Honor.

25 COURT: All right so you want that to be heard? Also I',

1 understanding you to say that you want the Motion to Continue
2 the Deposition to be heard, is that right?

3 REED: Yes, yes, Your Honor.

4 COURT: Okay what else?

5 REED: Uh there's a Motion to Terminate the Deposition.

6 COURT: There's a Motion to Terminate the Deposition?

7 REED: Yes, Your Honor.

8 COURT: That's your Motion, okay.

9 REED: Yes.

10 COURT: I'm making a note of that. All right and what
11 else do you contend is supposed to be heard.

12 REED: A Motion for Real Property Appraisal.

13 COURT: A Motion for Real Property Appraisal.

14 REED: Yes and a Motion for Family Financial Mediation,
15 ordered that be, that you know that that be done. That is part
16 of our, our rules here.

17 COURT: Okay so let me make sure I understand what you're
18 asking. You want your Motion to Compel Inventory to be heard,
19 Motion to Continue Deposition to be heard, Motion to Terminate
20 the Deposition to be heard, Motion for Real Property Appraisal,
21 and Motion for Family Financial Mediation that I ordered, is
22 that what you're asking to be heard this afternoon?

23 REED: Yes, Your Honor.

24 COURT: Mr. Oswalt, do you have anything that's supposed
25 to be heard?

1 OSWALT: Judge, I don't have any Motions pending in front
2 of you but I can address some of Ms. Reed's Motions.

3 COURT: Okay.

4 OSWALT: The Motion for a, uh, Appraisal, all she had to
5 do was ask me and we would agree so I don't oppose that-

6 COURT: All right.

7 OSWALT: I mean that's just part of the process.

8 COURT: Let me, let me make sure I'm following you on
9 this because there's so many Motions I don't want to get them
10 mixed up. So you don't have any objections to granting her
11 Motion uhm for Real Property Appraisal?

12 OSWALT: No, Your Honor. I've never, she's never asked
13 for one and one's never been denied so I'm not quite sure why
14 she calendared it. Had she simply asked me we would have agreed
15 to have an appraisal done on the property.

16 COURT: Okay, what property are we talking about here?

17 OSWALT: It's a residence here in Jacksonville, the
18 marital residence.

19 COURT: It's a marital residence?

20 COURT: Yes ma'am.

21 COURT: Uhm, I take it there's an actual Motion that
22 specifically requests that the Court Order that is that-

23 OSWALT: She's filed that as part of her, there's a,
24 there's three motions that, four motions that compiled under one
25 Motion. The first-

1 COURT: And what's the name of that Motion and when was
2 it filed?

3 OSWALT: Her, the header on hers, it's just called Motion.
4 And then it says Motion to Terminate Deposition and then there's
5 three other motions that are attached to that.

6 COURT: It's got a header that says Motions and it was
7 filed April, I can't read that it looks like the 9th is that it?

8 OSWALT: The copy I got wasn't filed, Your Honor.

9 REED: Yes April 9th.

10 COURT: All right I've, I've located that so and it has a
11 Motion to Terminate Deposition in it, it has, are all the
12 motions you contend need to be heard this afternoon, Ms. Reed,
13 contained in that?

14 REED: Yes, Your Honor, I do.

15 COURT: I found the Motion for Real Property Appraisal
16 contained in here and so, well I think we can take care of that
17 without further ado. Uhm, I will order that, uhm I will grant
18 that Motion and order that the marital residence located at 124
19 Robin Hood Drive in Jacksonville, uhm, be appraised. Uhm, she's
20 asking that the parties share equally in the cost of the
21 appraisal. Mr. Oswalt, any objection to that?

22 OSWALT: No. Judge, I think that's what we, we standardly
23 do here.

24 COURT: Okay and she's also uh got in that Motion that
25 she's requesting that be conducted prior to the financial

1 mediation which I assume you're okay with that?

2 OSWALT: Yes ma'am.

3 COURT: And that would kind of make sense that that would
4 need to be done before the mediation. Okay I'll grant that
5 Motion and that takes care of that one. All right, Mr. Oswald?

6 OSWALT: Judge, she's filed a Motion for Family Financial
7 Mediation. We're required as part of our local rules to
8 participate in that. So I'm not quite sure what, why that's
9 there. And-

10 COURT: Don't you have a form order that, or an AOC form
11 that gets filled in to--

12 OSWALT: Judge, we have a coordinator that I believe works
13 out of the Duplin County office that coordinates Family
14 Financial Mediation. Once it, once you file a claim for ED it
15 automatically sets in place certain procedures that you have to
16 name a mediator if not then the Court names a mediator.

17 COURT: The Court does it-

18 OSWALT: Yes-

19 COURT: So have you all discussed who the mediator might
20 be in this case I mean-

21 REED: Uh Barry Hudson is fine with me,

22 OSWALT: Your Honor, I believe, uh normally we use Mr.
23 Hudson, if he's available.

24 COURT: Okay well do I, I mean there's a Motion in front
25 of me but I don't know that the Motion's necessary so.

1 REED: Well it would be to order whoever the mediator
2 is, is going to be because we've not agreed on anybody as of, as
3 of yet, Your Honor.

4 COURT: Well who's the person in Duplin County that does
5 this?

6 OSWALT: Uhm,

7 CLERK: It's Darlene, she's in Sampson County.

8 COURT: In Sampson I'm sorry.

9 CLERK: I can get a copy of the Order and fill it out if
10 you want me to.

11 COURT: Oh that sounds good. Thank you very much, let's
12 do that and that'll take care of that then. Okay so that'll take
13 care of that, sounds like everybody's in agreement on that and
14 we can get that Order signed.

15 OSWALT: But I just-

16 COURT: Yes sir-

17 OSWALT: I just want to make sure, you're not granting the
18 Motion?

19 COURT: No, I'm going to do whatever the regular method
20 is-

21 OSWALT: Okay.

22 COURT: --for getting one appointed in this district
23 since the Trial Court Administrator says she's got the form for
24 doing that hopefully we can all agree on what's going to go in
25 it and once I sign that uhm, you're going to withdraw your

1 Motion for Family Financial Mediation as long as I sign off on
2 that form?

3 REED: Sure, Your Honor, that's fine.

4 COURT: Okay.

5 REED: I just wanted to bring it to the Court's
6 attention so we can go ahead and move this case on.

7 COURT: Okay so Defendant's Motion for Family Financial
8 Mediation is going to be withdrawn. Okay and that will leave us
9 with the other three Motions; to compel inventory, to continue
10 deposition, to terminate deposition. So is everybody ready to
11 make your arguments concerning those Motions?

12 REED: As far as the Compelling of the Inventory, I'm
13 not sure if there's a problem with, with I mean I haven't
14 received anything.

15 COURT: Why don't you all chat about that briefly before
16 we proceed? I think you two need to talk. That'll be a good
17 thing.

18 OSWALT: Judge, I'm ready to move forward on those items.

19 COURT: All right okay. Ms. Reed, let me hear your
20 argument on let's start with the Motion to Compel Inventory and
21 let me find that Motion in here. Okay Motion to Compel
22 Inventory Affidavit. All right, Ms. Reed?

23 REED: Yes, Your Honor uh this, the Complaint was filed
24 on November, I'm sorry October of 2008. And typically what is
25 supposed to happen is that within 90 days of the filing the

1 parties are, the Plaintiff is supposed to give their, their uhm
2 ED affidavit. However, Your Honor, we have not received any of
3 that, the ED affidavit.

4 COURT: The Complaint was filed November when?

5 REED: The Complaint was filed October of 2008.

6 COURT: I'm sorry October of 2008?

7 REED: Yes, Your Honor.

8 COURT: What date in October?

9 REED: Uhm, -

10 COURT: It's on the bottom of the file. Okay so you're
11 saying that they have not timely uhm, served you with their
12 Inventory Affidavit? You've not been served with it yet?

13 REED: Correct, Your Honor.

14 COURT: Complaint was filed actually it was filed
15 September 29th, 2008. Okay well let me hear a response to that
16 then.

17 OSWALT: Judge, I've been practicing law in Onslow County
18 for 13 years. I don't know of any domestic case where anyone has
19 ever filed here an ED affidavit within 90 days. Now Ms. Reed
20 says typically that's the case. I think if you asked the Trial
21 Court Administrator to look you're going to find that no one has
22 ever done that. For the life of me I cannot recall a single
23 case that I've ever been involved with where any party has
24 objected to it not being filed within 90 days. Typically what we
25 do, Judge, is we exchange discovery, which was what was done in

1 this case. I sent Ms. Reed Request for uh, Interrogatories, a
2 Request for Production of Documents, Request for Admissions on
3 12/31/08. I got those back from Ms. Reed on 03/06/09. When she
4 sent her responses to my discovery, she forwarded to me her
5 Request For Discovery. That was sent to me on 03/06. I had a,
6 there's an Order signed by the Clerk in the court file that
7 indicates I have until May 8th to provide to Ms. Reed's Request
8 for Production of Documents, Interrogatories, and Request for
9 Admissions. In her request-

10 COURT: You have until May 8th?

11 OSWALT: Yes ma'am. And Judge, I've got a copy of what
12 was sent to me and it in tells forty-four interrogatories, about
13 a hundred uh requests for admissions and I think about the same
14 request for production of documents. Within that, her request,
15 it specifically asked for marital property, separate property,
16 vehicles, it is, what she's asked for is for me to provide her
17 with what she's here compelling me to provide. Uh I, I don't
18 know whether there's a copy of interrogatories in the, in the
19 Court file but I-

20 COURT: It's a thick file but I don't know the answer to
21 that either.

22 OSWALT: Uhm, Judge what, what I've got-

23 COURT: It's a Request for Production of Documents, I saw
24 that so it probably was.

25 OSWALT: She and what I'm going to just read to the Court

1 is uh, "Please complete Exhibit One, Affidavit of Financial
2 Status for your income and debt." Uh she asked for uh all the
3 forms provided for marital and separate intangible property,
4 retirement benefits, HR, IRA's, the items that you typically see
5 or that you do see in an Equitable Distribution Affidavit. That
6 is what comprises her discovery that was sent to me. Uh again,
7 Judge, that's not due until May 8th. I have been compiling it,
8 it will be sent to Ms. Reed on or before May 8th. Uh she's
9 filed a Motion to Compel that she's uh brought that under the
10 Rules of Civil Procedure for Rule 36 that requires that uh there
11 be some sort of uh statement that indicates that she had in good
12 faith attempted to gather that information. I would ask Ms. Reed
13 to provide me any documentation that she contends that she has
14 sent to me indicating uh that I am uh that I haven't done what I
15 was supposed to within the time allowed. I would contend to
16 the Court there is nothing. There's no, there's nothing that's
17 been sent to me. Uh she's aware of the time in which to file
18 the response of the interrogatories. Notwithstanding that,
19 she's filed this Motion to Compel. I would ask the Court to deny
20 her Motion to Compel.

21 COURT: Well, Ms. Reed, what do you want to say in
22 response to that? He says you brought up in pursuant to Rules
23 of Civil Procedure and that he doesn't know of any efforts
24 you've made to get that information from him otherwise short of
25 filing this Motion.

1 REED: Your Honor, the, when he sent my client his
2 discovery we responded back with our information. Now the
3 discovery is not contingent upon the ED affidavit. All I'm
4 asking for is for the ED affidavit. I did present him, I
5 believe it was a form for him to fill out, or for his client to
6 fill out, so and we have provided ours. However, we have not
7 been provided anything from them about the ED affidavit. It's
8 supposed to be done. As far as finding something, I'll have to
9 look through my notebook here and look and see what I have that
10 has asked for uh specifically for that information. I know I've
11 sent him information uhm faxes requesting that discovery be
12 completed. And again, and that would also go to the fact that,
13 that the deposition was untimely done because we still had, we
14 still are in the process. We still haven't done hardly
15 anything. There's been no ED affidavits filed. No we don't
16 typically file them within the 90 days. I would agree to that.
17 However, that is what is supposed to be done. This is now
18 several months later and it still hasn't been done. It's not
19 part and parcel of the discovery. What we're just asking for is
20 for a date that this will be, that this will be done so that we
21 can go on ahead and move on with the case.

22 COURT: Okay, thank you.

23 OSWALT: If I may be heard, Your Honor?

24 COURT: Sure.

25 OSWALT: Judge, the only reason why I have a financial

1 affidavit from Ms. Reed is because I asked for one in my
2 discovery that was served on her at the end of December. Uh
3 that, it's not my fault she waited until uh the time was due to
4 respond to my discovery for her to send me discovery which is
5 what took place. Uh there's an order in the file signed by Ms.
6 Williams, our Clerk of Court, that states that my time to
7 respond to her documents, interrogatories, request for
8 admissions, be extended including May 8th of 2009 and that date
9 hasn't arrived yet.

10 COURT: Okay. Thank you. I'm going to step out and get
11 my Rules of Civil Procedure and Chapter 50 and while I'm doing
12 that I'd like you all to look at this form and see if you can't
13 fill it in, by that I mean Ms. Reed and Mr. Oswalt, so I can
14 just sign off on it as far as the uhm mediation is concerned.
15 So I'll be back shortly; you all can take care of that.

16 (TAPE PAUSES AND THEN RESUMES)

17 COURT: --domestic rules have anything in them that
18 addresses uhm ED affidavits? Inventories, excuse me?

19 OSWALT: No ma'am in fact, we have attempted to put
20 together a Family Financial Mediation Form of Rules but last
21 time I, I was on the committee to do that--

22 COURT: Well that is time consuming because I was
23 involved in doing that in Wake County and it's no fun.

24 OSWALT: As of yet I don't think we have a--they've been
25 adopted. Basically what we,--

1 COURT: Okay.

2 OSWALT: --what we do is we try to get an Affidavit prior
3 to mediation. Uh we have a form that we, that we've agreed upon
4 but that's basically it.

5 COURT: Okay, I just wanted to, if you had local rules I
6 wanted to at least take a look at those.

7 REED: Well there are some rules that are published on a
8 website though and your local rules. And I'm getting my, my
9 paralegal just went to get my book for me.

10 COURT: Well I can't get online in here or if I can I
11 don't know how. I've tried it. I can do it back there. **(LONG**
12 **PAUSE)** See if there's anything in there about Equitable
13 Distribution Inventory Affidavits. If there is I assume it's
14 consistent with the statute but. And your form is called an
15 Equitable Distribution Form, is that the inventory?

16 OSWALT: Yes ma'am.

17 COURT: Is there anything else in the rules about when
18 you're required to file that? Well I don't think the local
19 rules here are currently required all relevant documents that
20 could include those to be exchanged five days before the
21 settlement conference. And failure to comply with these rules
22 can result in sanctions. Thank you very much. Well the local
23 rules don't really address uhm the specifics. They simply say
24 that at least five days prior to having the conference that
25 you're to exchange all relevant information which includes the

1 inventory. But the General Statute 50-21 is very specific.
2 Within 90 days after the service of the Claim for Equitable
3 Distribution, the party who first asserts the claim shall
4 prepare and serve upon, **shall** prepare and serve upon the
5 opposing party an Equitable Distribution Inventory Affidavit
6 blah, blah, blah, blah. The Court may extend the time limits in
7 this subsection, and have gone one, you know, within 30 days
8 after the service of the inventory affidavit, the party to whom
9 the service was made shall prepare and serve an Inventory
10 Affidavit upon the other party. But it goes on to say the Court
11 may extend the time limits in the subsection for good cause
12 shown uhm. I take it there wasn't any Motion for Extension in
13 this case Mr. Oswalt in as much as both you and Ms. Reed have uh
14 indicated that uhm apparently the attorneys in this district
15 don't routinely file them within 90 days.

16 OSWALT: That's correct, Your Honor.

17 COURT: Okay, all right. Well do you want to make an
18 oral Motion to extend your time at this point, Mr. Oswalt?

19 OSWALT: Yes, Your Honor.

20 COURT: Well it seems to me that in as much as attorneys
21 in this district don't routinely exchange them uh during the
22 time period set forth by the statute which are mandatory because
23 the statute does say "shall". But in as much as that is not the
24 uh routine practice in this district then this is how I'm going
25 to deal with the Motion to Compel. So I'm going to uhm grant

1 Mr. Oswald's oral Motion to Extend Time for, for serving the
2 Equitable Distribution Inventory Affidavit on the Defendant to,
3 and you said May 8th is when the discovery's supposed to be
4 provided?

5 OSWALT: Yes, Your Honor.

6 COURT: To May 8th, 2009. Now that moots your Motion to
7 Compel at least at this point in time because I've given him an
8 extension of time. So uhm, I, I mean if it's not provided by
9 May 8th, which is now the, the date that I've designated, then
10 certainly at that point you might want to go forward on your
11 Motion to Compel, so what do you want me to do to your Motion to
12 Compel. Do you want to withdraw it, do you want to keep it
13 pending so that in the event it's not provided May 8th you can
14 have it heard?

15 REED: Well I guess I'll just withdraw it and I'll
16 refile it if we don't.

17 COURT: All right so Defendant uhm,-

18 REED: And that way, that way is clear.

19 COURT: Will withdraw his Motion to Compel Inventory
20 Affidavit. And that should accomplish what you want anyway
21 hopefully.

22 REED: Yes, Your Honor, that was-

23 COURT: Maybe not as soon as you might want it but that's
24 the date so. All right how we doing-

25 REED: And I understand that in 30 days after that I

1 need to respond back with uhm-

2 COURT: Right, because it would be a shame for them to
3 get theirs filed and served, or to serve theirs on you and not
4 have you comply with the statute and us be in here dealing with
5 that. All right so how are we doing on the Financial Mediation
6 Form?

7 OSWALT: Judge, I think the form's been filled out.

8 COURT: Is that something that a Judge needs to sign
9 here. I don't know how your local forms, yes, it is an Order.
10 Okay well is everybody, Mr. Oswald and Ms. Reed, you both okay
11 with me signing the Mediated Settlement Conference Order?

12 OSWALT: Yes ma'am.

13 REED: Yes, Your Honor.

14 COURT: Okay. I assume ya'll communicated with the Trial
15 Court Administrator and what's in it is uhm what you want done
16 so I am now signing that and Ms. Reed is withdrawing her Motion
17 for Family Financial Mediation because it's not necessary
18 anymore. All right, all right that gets us down to the Motion
19 to Continue the Deposition and the Motion to Terminate the
20 Deposition. So Ms. Reed?

21 REED: Your Honor I do-

22 COURT: Oh and I'm sorry I said Ms. Reed, but let me find
23 those Motions in here make sure I'm on the same page with you.
24 Motion to Terminate Deposition and was that an oral Motion that
25 was made to continue the deposition or?

1 REED: No, that was a written motion it says Motion to
2 Continue Deposition and then Amended Motion to Continue
3 Deposition. And I believe that was filed on or about April 1st.

4 COURT: Let me see if I can find those in the file.
5 Believe they were filed when?

6 REED: I believe that they were filed on the 1st of uh
7 April. The second one, the amended one was filed on the, again
8 the 1st of April, at least signed and dated on the 1st of April.

9 COURT: There's a Motion to Continue filed April 1st and
10 an Amended Motion to Continue. All right, I've got the motions.
11 Uh let's hear what you have to say about those.

12 REED: I'm sorry, Your Honor, I didn't hear what you
13 said?

14 COURT: I found the Motions in the file so you may
15 proceed with your argument concerning those.

16 REED: Your Honor, I do have a uh copy of the CD where
17 that my Motion, which was for April the 8th where I asked to
18 have uhm the deposition continued, but Mr. Oswalt asked to
19 continue my Motion to Continue. Your Honor, I would ask if the
20 Court would uh-

21 COURT: Well was an, any kind of Order signed?

22 REED: No, it was not signed.

23 COURT: In front of which Judge was that?

24 REED: Judge Foy. There was no Order signed.

25 COURT: So no Order was signed. Did he-

1 REED: He just-

2 COURT: Did he verbally Order something?

3 REED: He just continued because Mr. Oswald asked to
4 have it continued. And as said I've got a copy of the CD from-

5 COURT: That you want to play.

6 REED: Yes.

7 COURT: How long does it take?

8 REED: Just a couple of minutes I would imagine.

9 COURT: All right we'll play it, if we've got the ability
10 to do that, Madam Clerk. While you're thinking on that do you
11 have an Order for me?

12 (Conversation unrelated to this case)

13 COURT: I tell you what let's take a fifteen minute break
14 in this case. Let's let the Clerk see if there's any way she
15 can set that up so we can hear it after the break and Ms. Reed
16 if you'll consult with her maybe I can get that Order signed
17 which I would like to get done.

18 (15-MINUTE BREAK)

19 COURT: Okay all right Ms. Reed?

20 REED: Your Honor, I initially filed this Motion to
21 Continue. I got the Notice of the, of the Deposition on I
22 believe it was on, well I've got a timeline and I guess if I can
23 hand that up that will probably--

24 COURT: Okay, if you'll show that to Mr. Oswald first.

25 REED: Sure.

1 OSWALT: I'm going to object, Judge. If she wants to
2 testify to that she can but it supposedly relates to
3 correspondence between my secretary and her and her secretary
4 and stuff that she's done. And if she wanted to bring them in
5 she could have them testify, but I'm going to object to that.

6 COURT: Well I guess I'll have to sustain your objection.
7 So Ms. Reed, I mean if you want to testify yourself you
8 certainly can do that, but if you're saying if it's somebody in
9 your office you need to have them here.

10 REED: I need to have what?

11 COURT: You need to have them here to testify.

12 REED: She is here.

13 COURT: Ready, want to call her as a witness?

14 REED: Well the, we started having problems on this
15 case, let's see on October the 8th there was a package that was
16 uh sent over to my office and uhm we request, we made, we
17 requested uh information about the package. That package ended
18 up uh as-

19 COURT: I've actually read, while I was waiting, I read
20 the Motion to Continue, the Amended Motion to Continue, and the
21 Motion to uhm Terminate the Deposition, so uhm you got a package
22 when now?

23 REED: We had got it on, on April the 7th. My client
24 picked it up that day. We had gone the day before in order to
25 uhm not the day before, the week before in order to pick up the

1 package.

2 COURT: Was that Judge Cameron's Order?

3 REED: Yes and Judge Cameron, and Judge Cameron ended up
4 having to draw up a receipt for my client to sign because we
5 could not agree on what the, on what was the language that
6 needed to be contained in that receipt.

7 COURT: Okay.

8 REED: That was picked up on, on April the 7th. On the
9 day I believe it was on April the 2nd when we went in for the uh
10 went in to pick up the package, my client and myself, we were
11 told to leave. The package was, was a big part of that, we had
12 not had an opportunity to uh-

13 COURT: Was that April 2nd date before or after Judge
14 Cameron entered those Orders?

15 REED: Well Judge Cameron entered his Order on March the
16 27th. He actually signed the Order on, I believe it was on the
17 24th but did not, it was not filed with the Clerk's office until
18 the 27th.

19 COURT: Okay, okay.

20 REED: Now as I said we have provided them with our
21 discovery. We had not been provided with any discovery and
22 initially the deposition, they asked us about a date; we gave
23 them a date my assistant, my paralegal, she said April the 8th
24 was good. And then on the same date we sent another fax stating
25 that that date was not good that we needed to have the receipt-

1 COURT: What, what date was that?

2 REED: That was on, that was on March 20th. That was on
3 the same date.

4 COURT: So on March 20th you okayed the deposition with
5 the Plaintiff's office and then the very same day sent something
6 saying that that date was not okay?

7 REED: Yes uhm let's see I'm sorry. It was on the 19th
8 that we sent over saying that it was okay. On the 20th we sent
9 over saying that we objected uh that we did not want to do that
10 on the, on the uhm I'm sorry on the 23rd they said that, that
11 that date would not be good.

12 COURT: Okay, March the 19th you okayed the April 8th
13 deposition date and when did you-

14 REED: It was on the 23rd we indicated that the date-

15 COURT: On the 23rd you sent written correspondence?

16 REED: Yes, Your Honor.

17 COURT: Saying it wasn't good, okay.

18 REED: Yes Your Honor and that we needed to have all
19 discovery prior to the April 8th uh date and also to have the
20 Order uh be signed prior to, uh prior to that time, prior to the
21 time of the deposition. Uh we then sent a subsequent fax after
22 we-

23 COURT: What, what, what order?

24 REED: The order by Judge Cameron we had-

25 COURT: Okay.

1 REED: We had a hearing in January and uhm at that time
2 we asked to--there was a Motion to compel because we hadn't
3 received uh the discovery well not discovery but uh financial
4 records that had been subpoenaed and other items we had
5 subpoenaed and we had not received any of that. The package was
6 one of those items. We then calendared it for the Entry of
7 Judgment which was on March, uh I believe it was March the 20th
8 in front of Judge Cameron. Judge Cameron ended up signing the
9 Order as said on the 24th and it was entered in on the 27th of
10 March. After that time that was when the, that was when we
11 attempted to go to get the package that was ordered to be
12 released uh to us. That was on, on or about April the 2nd. Uh
13 on April the, I believe it was on April the 4th, we had to meet
14 with Judge Cameron so that he could work out and tell us about
15 getting this package and what released. Judge Cameron's Order
16 indicated that, that he would, that my client would be able to
17 pick up the package on uhm without, without it being, without
18 being prejudiced. But what Mr. Oswalt, what Attorney Oswalt did
19 was he, he delineated out each specific item and how much it was
20 and what the order, what the form number was. These are
21 pornographic materials that my client had never seen. And it
22 didn't indicate anything, anywhere on the document that it was
23 without prejudice as according to--that he would not be
24 prejudiced by it. Uhm, so Judge Cameron ended up writing up his
25 own uh receipt that he wanted my client to sign. That was what

1 my client signed and he went to pick up the, the item on the
2 April the uh 7th the day before the deposition. That was one of
3 the problems. Uhm the other uh problem is that on that same day
4 we also had a hearing-

5 COURT: Uhm, what same day?

6 REED: On the April, the March the 20th, March the 20th.

7 COURT: March the 20th?

8 REED: Of 2009. We also did a Motion for a Protective
9 Order uh for some of the discovery, questions to Interrogatories
10 and, and uhm and also for Request for Production of Documents.
11 That Order has not been signed yet by Judge Cameron and we were
12 given 20 days-

13 COURT: Well let me make sure I'm following you. You
14 said that you on March the 20th you did a Motion is what you
15 said a protective order-

16 REED: Well we, we, a Motion was heard.

17 COURT: Okay so your Motion was heard for protective
18 order by Judge Cameron?

19 REED: Yes Your Honor. As well as the entry of judgment
20 of the previous Order.

21 COURT: Okay.

22 REED: And we were, after receipt of the package by the
23 Defendant, we were given 20 days to investigate the contents of
24 that package.

25 COURT: Is there a Court Order that says that?

1 REED: There uhm it does not state that. That's part of
2 Judge Cameron's Order which has not been signed yet.

3 COURT: So after receipt of the package you were given 20
4 days to review it?

5 REED: Yeah to investigate the contents of it.

6 COURT: Before what?

7 REED: Before uhm, before responding to the uh to the
8 discovery questions that uh the Judge allowed us to, time to, to
9 respond on.

10 COURT: But that Order by Judge Cameron has not been put
11 in writing?

12 REED: Well that that part of it was. The protective
13 Order is what has not been put in writing. There's an Order,
14 the Order that's on for, that was entered on the 27th that one
15 did say that we had 20 days in which to investigate the
16 contents.

17 COURT: Okay so there is a typewritten Order that
18 provides for them?

19 REED: Yes, there is.

20 COURT: Let, let me find that. You say it was filed on
21 March the 27th?

22 REED: Yes, Your Honor.

23 COURT: All right let me see if I can locate it. There's
24 an Order signed by Judge Cameron March 25th for February 2009.

25 REED: That's, that was done on the 27th.

1 COURT: Okay. Here we go. Court awarded visitation,
2 okay, the Plaintiff and Defendant exchanged documents within two
3 weeks of the date of this Order. Plaintiff failed to file, ooh,
4 package is currently located at Attorney Timothy Oswald's office
5 where it was picked up by the Defendant to include the original
6 box, invoice, tracking that doesn't say anything about the 20
7 days. Is there a separate Order that mentions that?

8 REED: That's the, that's, that's the-

9 COURT: Unless it's in the findings.

10 OSWALT: There's no Order, that hasn't been reduced to
11 writing yet.

12 COURT: Okay.

13 OSWALT: What, what happened is Ms. Reed sort of rolled
14 part of that hearing into this Order in order to facilitate the
15 pickup of the package. Uhm, the hearing on the, there was a
16 hearing to reduce a previous hearing to judgment and at the same
17 time she had a, she had filed a protective order in regards to
18 the production of documents and request for interrogatories that
19 I had requested.

20 REED: That is correct Your Honor so there are two,
21 there are two different Orders but from the same --

22 COURT: Give me just a minute. So there is still an
23 Order that needs to be signed by Judge Cameron? Is that
24 correct?

25 OSWALT: Yes ma'am and Judge the-

1 COURT: And is that the Order regarding the request for
2 protective Order?

3 OSWALT: Yes. It's denying her request for protective
4 Order. It states that it limits some of the bank records I'd
5 asked for to specific time frames. Uhm, and it says that he
6 shall have twenty days upon receipt of the package to respond to
7 the request for admissions that I had sent to her.

8 COURT: So okay, so you agree that in this order which
9 has not been reduced to writing that it denied her request for
10 protective Order but gave her client uhm twenty days to review
11 whatever was in the package before responding to your discovery
12 request, is that correct?

13 OSWALT: Well it, it gave them twenty days to respond to
14 my Request for Admissions because I had specific admissions
15 regarding the package.

16 COURT: So it gave him twenty days in which to review the
17 contents before responding to Request for Admissions?

18 OSWALT: Yes ma'am.

19 COURT: All right; everybody agree on that?

20 REED: Well, no, I believe it was to respond back on
21 those questions of the discovery.

22 COURT: Well do you have that tape?

23 REED: No we don't Your Honor. We're probably going to
24 have to get uh get with Judge Cameron in order to get that
25 reduced down to writing.

1 COURT: Okay. Well at the very least you all can agree
2 that your client had twenty days to review the contents before
3 responding to something, whether it's a request for admission or
4 productions of documents or some other discovery, is that right?

5 REED: Correct Your Honor.

6 OSWALT: Judge, it would have been the discovery that was
7 due me uh my discovery that I sent Ms. Reed back in January that
8 was due I believe March 5th.

9 COURT: What, what kind of discovery were you seeking
10 then?

11 OSWALT: I'd asked for the request for admissions-

12 COURT: Admissions, anything else?

13 OSWALT: Request for production of documents, and request
14 for interrogatories, that was the extent of it.

15 COURT: So, all right.

16 OSWALT: And the only item that specific addressed this
17 package was some request for admissions.

18 COURT: Okay so Judge Cameron's Order that has not been
19 reduced to writing denied the Defendant's request for a
20 protective Order but gave the Defendant twenty days in which to
21 review the package before he responded to either the request for
22 admissions, request for production of documents, or any
23 interrogatories?

24 OSWALT: Yes ma'am.

25 COURT: Everybody agree on that?

1 REED: Well I don't agree that he denied it, he denied
2 it on part and granted on part because there was some parts that
3 he, he allowed.

4 COURT: Is Judge Cameron drafting the Order himself?

5 REED: No, Your Honor.

6 COURT: Who's drafting the Order?

7 OSWALT: I'm drafting the Order.

8 COURT: Mr. Oswalt, what were you told to put in it?

9 OSWALT: Judge, this is what I was told to put in there.
10 There was some timelines in regards to some financial documents.
11 The Judge okayed those. Uh I had a broad request for, for some
12 financial documents. He narrowed that request to specific
13 timeframes. I had requested uh, a, to be, that I be allowed to
14 have Mr. Ogniewski's hard drive on his-

15 COURT: I tell you what hold on for just a moment I know
16 I asked you that question but before you go any further. For
17 purposes of what I have to decide this afternoon, I understand
18 that both you agree that Judge Cameron gave the Defendant twenty
19 days to review the package contents before responding to either
20 request for admissions, request for production of documents or
21 interrogatories, is that correct? You both agree to that?

22 REED: Correct, Your Honor.

23 OSWALT: Yes ma'am.

24 COURT: Is there anything else I need to know about what
25 he did? If not let's just move on.

1 OSWALT: I don't think so.

2 COURT: Okay let's move on then. Great so, I know that
3 and you all have agreed with that. Okay.

4 REED: Your Honor, and what we were contending, Your
5 Honor, is that there was not sufficient time to allow the
6 investigation of the contents prior to the deposition. And that
7 we were in need of the uhm materials in order to participate in
8 the deposition.

9 COURT: That's the, that's the guts of your argument the
10 gist of your arguments that you didn't, your client did not have
11 adequate time to review the contents of that package prior to
12 the deposition?

13 REED: Yes Your Honor, and also just for the record I
14 just wanted to let the Court know at the deposition we did do
15 standard stipulations, I did agree to them. I just for whatever
16 purpose that makes to the Court.

17 COURT: Okay anything else you want to say about your
18 remaining motions?

19 REED: Uhm, we have just well we've been having a
20 difficult time Mr. Oswald and I with, with getting documents.
21 We would subpoena documents, we did, we would not get a
22 response. We, and that was the purpose, that was the basis of
23 the Motion to Compel because we kept subpoenaing and nothing
24 would be provided to us. We'd subpoena again there'd be nothing
25 provided to us. And so I ended up filing uhm the Amended Motion

1 to Compel. As I said because this package was given, was we had
2 knowledge of it sometime in October, October 29th of 2008 and it
3 wasn't until April the 7th of 2009 that we even got, got to look
4 at the package. And Judge Cameron had ordered previously that
5 we have, that we be allowed to look at the package. You know,
6 that we'd be allowed, we be allowed to get the package. So it
7 took us approximately three to four months, maybe three, three
8 and a half months, between the time that it was actually
9 ordered, which that order is, is reduced to writing for March
10 27th.

11 COURT: Let me ask you this?

12 REED: Yes, Your Honor.

13 COURT: You have a Motion to Terminate Deposition but as
14 I understand it the deposition took place?

15 REED: Yes, Your Honor.

16 COURT: I also believe, I understand that you weren't
17 there for the entirety of the deposition?

18 REED: Correct, Your Honor.

19 COURT: So what are you asking that I do because the
20 deposition's taken place so I can't exactly terminate the
21 deposition. So what is that you want me to do pursuant to this
22 Motion you filed that's called a Motion to Terminate Deposition?

23 REED: Pursuant to 30D, Your Honor, what I have asked,
24 what I'm asking for is I believe that the deposition was being
25 conducted in bad faith, and in such manners to unreasonably

1 annoy, embarrass or oppress the deponent. And so what I am
2 asking for an Order for is which would allow the deposition to
3 be suspended and resume at a later date after all of the
4 discovery has been provided.

5 COURT: Okay anything else that you want to say before I
6 hear from Mr. Oswald?

7 REED: Uh no, Your Honor.

8 COURT: Okay, Mr. Oswald?

9 OSWALT: Judge, I'll address her Motion to Continue the
10 Deposition and her Amended Motion to Continue the Deposition
11 first. Judge, what took place is uhm, and I have put this in a,
12 should be labeled a Motion for Sanctions. It's not before you,
13 but I sort of put in that the correspondence that I've gotten
14 from Ms. Reed. I sent her a fax uhm on March 5th-

15 COURT: Well give me just a minute to find that even
16 though I'm not going to be considering that today if it.

17 OSWALT: I think it would be helpful as far as-

18 COURT: Might be helpful well I've got it here so. When
19 was uhm, that motion filed?

20 OSWALT: Judge, that was filed April 16th.

21 COURT: Motion for Sanctions?

22 OSWALT: Yes ma'am.

23 COURT: Okay, if you'll give me a minute to look at this
24 Motion for Sanctions. And that was filed January wait a minute,
25 what's the date your Motion for Sanctions was filed?

1 OSWALT: April 16th.

2 COURT: I'm looking at uh an earlier Motion for Sanctions
3 so let me disregard that one and find an April. Goodness knows I
4 don't want to consider anything I don't have to consider. Okay I
5 found it all right.

6 OSWALT: Judge, I have included all the correspondence
7 between my office and Ms. Reed's. Exhibit A is a letter that I
8 faxed over to her asking her uh that I would like to depose Mr.
9 Ogniewski, what days are available? She sends me a fax back
10 looks like on the 19th of March saying uh April 8th would be
11 appropriate. Accordingly I sent out a uh request, a formal
12 request to depose Mr. uh Ogniewski and served that on Ms. Reed
13 for uhm April 8th. That's the only correspondence I got from
14 Ms. Reed in regards to that. What it appears took place is that
15 she filed a calendar request uh on the 31st of March and asked
16 that all pending Motions be heard. Now at that point in time, I
17 wasn't, there wasn't any Motions to the best of my knowledge.
18 The next day she filed a Motion to uh, Motion to Continue the
19 Deposition, which was filed after her calendar request. There's
20 never been a Calendar Request submitted for this other than the
21 ones that she submitted for this time. So that's the reason why
22 in that case, that Motion wasn't heard I wasn't given notice.
23 Uhm, and I think that's why Judge Foy refused to hear it. I
24 don't have any other correspondence from Ms. Reed other than her
25 Motion to Continue the Deposition. Uh I told Ms. Reed for the

1 life of me I can't understand why my discovery to her has
2 anything to do with my deposition of her client. He has asked
3 for primary custody, we have yet to have a custody hearing. Uh
4 my client has custody of the child. Uh she's a school teacher
5 and she may be moving back to Wisconsin once school gets out.
6 So I'm in a position that I have to move forward on an issue of
7 custody which is what I was trying to do. Uh I noticed Ms. Reed
8 of this deposition, uh she tried to have it continued, didn't
9 file the motion within time. Notwithstanding that I don't
10 believe there's any grounds to continue the deposition because
11 it's not like he's unavailable or she's unavailable. The
12 standard items that you would raise on a Motion, that I contend
13 you would raise on a Motion to Continue Deposition is that is
14 not held in the proper place, or the client's not available.
15 It's none of that it's not that he's not available, it's simply
16 that her contention is it's in bad faith because I haven't
17 responded to the discovery which I don't have to respond to yet
18 until May 8th. Uhm, we had, that's my argument in regards to
19 her Motion to Continue. In regards to her Motion to Terminate
20 the Deposition, uh she was noticed of the deposition, she
21 appeared at the deposition. Uh she admitted to the standard
22 stipulations, in fact she said she waived any objection to the
23 deposition. Uhm, we started the deposition and there's a copy on
24 that motion uh, on the Motion for Sanctions. I've included the
25 portion of the deposition and what took place is we started the

1 deposition. We went through some-

2 COURT: Let me make sure I have that; what is it, what's
3 your Exhibit number on that?

4 OSWALT: It should be Exhibit F.

5 COURT: I've got A, B, C, E, F, got it.

6 OSWALT: You can see Ms. Reed agrees to the standard
7 stipulations. We start this deposition and basically go through
8 some background information about Mr. Ogniewski, where he works,
9 how long he's been there. He's a uh Lieutenant which equates to
10 a O-3 in the Navy. We went through some of that background
11 information about how long he's going to be uh expected to be
12 here in Onslow County and whether or not he's going to retire
13 anytime soon and things of that nature. Uhm, and then I asked
14 him a question about when him and his wife resided in the state
15 of Florida and I asked him something regards to his wife
16 discovering on a computer that he was having an extra-marital
17 affair that's when Ms. Reed stood up and said "I'm terminating
18 this deposition". I asked her specifically and it's in the
19 transcript, "Will you state for the record why you are uhm
20 terminating this deposition?" Uh and Ms. Reed basically uh
21 starts talking about discovery. She says, "I'm making an oral
22 Motion to Terminate this deposition as we've requested
23 discovery. It's being conducted in bad faith. It's done to, in
24 a manner to be unreasonable to harass and to annoy." Uh she
25 didn't attempt to contact the Judge as required by the Rules uh

1 to, to have a Judge order that the deposition be terminated.
2 She simply on her own stood up and said, "This deposition is
3 over with," and walked out. The next day she filed this Motion
4 to Terminate the Deposition. And in her argument-

5 COURT: Let me inquire, I know she left, did the
6 deposition proceed?

7 OSWALT: She left with her client.

8 COURT: Okay, so they both left?

9 OSWALT: Yes ma'am.

10 COURT: All right.

11 OSWALT: Uhm, in her Motion that she filed the next day,
12 the Motion to Terminate the Deposition, her justification, and
13 I'm looking at uhm starting with line or paragraph twenty, and
14 that's under her Motion to Terminate the Deposition, it says,
15 the defense, "Defendant's counsel orally made a Motion to
16 Terminate the Deposition. That the questions presented to the
17 Defendant were not part of any prior discovery questions; that
18 the Defendant or Defendant's counsel was not put on notice as to
19 the line of questioning to be presented." Uh and then it, it
20 says that, "in order for the Defendant to actively participate
21 in the deposition, the Defendant would need to be provided with
22 all discovery documents and that the questions presented could
23 have been discovered through the interrogatories." That's her
24 justification for walking out of this deposition. Uhm, Judge, I
25 haven't done this a very long time but I've done it long enough

1 to know that I'm not required to give her advance notice of what
2 questions I intend to ask during a deposition. Uh I mean that's
3 the purpose of it is to gather information. Uhm, I'm not
4 required to put her on notice. Uhm the uh, the questions she
5 contends could have been discovered through interrogatories or I
6 assume are the interrogatories that she asked my client which I
7 haven't yet responded to. But there's nothing in there
8 regarding, "has your husband ever had an affair," or anything
9 along those lines. I mean I, it was well within my right to ask
10 that line of questions. There's no justification to terminate
11 this deposition. Ms. Reed would have you believe that because
12 Mr. Ogniewski has not had an opportunity to examine this box and
13 I'll tell you what this is about. Uhm my client left the
14 marital residence, moved into a house here in Jacksonville.
15 About uh two months after she moved out, she received a package.
16 She opened that package up and inside of it was a box of dildos
17 of various types and, and lubricants. I sent to Ms. Reed a
18 letter saying, "if your client sent this to my client, it
19 concerns me because she's got the children, minor children or
20 one of them which we're fighting over, a four-year-old". I said
21 "if he sent this to her as a joke we don't appreciate it". Uh
22 the box was brought to my office and I discovered that on the
23 box it wasn't addressed to Ms. Ogniewski, in fact it was
24 addressed to Mr. Ogniewski at the marital residence which is
25 where Mr. Ogniewski continues to reside. What has happened is

1 the post office took her forwarding, her change of address, and
2 sent the box to her. So the box was sent to Mr. Ogniewski two
3 months after they separated. He's refused to come pick this box
4 up because he doesn't want to sign an acknowledgment that these
5 items are his. Uh Judge Cameron said, "you can go to his
6 office," and the order that you signed which is why it's that
7 way, we sort of bifurcated two proceedings because we wanted him
8 to have these, in this order it says "you can pick these items
9 up without any prejudice. You're not acknowledging that they're
10 yours". Well he wouldn't sign the receipts that I had when him
11 and Ms. Reed came to my office. So Judge Cameron had to write
12 his own receipt which he wrote three days prior to the
13 deposition. It was only the day before the deposition that Mr.
14 Ogniewski came to pick up this box. And Ms. Reed wants to argue
15 that he needs twenty days to look at this box to determine
16 whether or not he ordered it. That's her argument in regaros to
17 this box that he picked up. Nevertheless, that is not
18 justification for walking out of this deposition that she walked
19 in and agreed to do and that we had set up originally. So I,
20 that's where we're at.

21 COURT: Okay.

22 OSWALT: Judge, what I'm asking for is that you deny, my
23 argument would be if she wanted to terminate this deposition she
24 should have, at that point in time, made a motion to, to
25 suspend, attempted to contact some sort of judge, and I think

1 that requires, the statutes require that you attempt to contact
2 the District Court Judge that's in session or another District
3 Court Judge to argue the issue of bad faith uh, to determine
4 whether or not the deposition goes in. She didn't do that. She
5 was upset that Judge Foy didn't hear her, her motion to
6 terminate or suspend the deposition and had no, my position is
7 she had no intent to follow through with the deposition and, and
8 the first question that I asked him that was controversial she,
9 she stopped and got out. I'm asking that you deny that Motion
10 to Terminate and I'm asking pursuant to that if it's denied, I
11 think I'm entitled to attorney's fees. I'm asking, what I'm-

12 COURT: Well you told me you didn't want me to hear the
13 Motion for Sanctions today so I'm just.

14 OSWALT: Well Judge I still think that's why I postponed
15 the Motion for Sanctions because I think under this if she makes
16 a Motion to Terminate a Deposition and that is denied, I think
17 it's within your right to, to, to, to apply attorney's fees and
18 what other necessary measurements you deem appropriate. All I'm
19 asking for Judge is that she, he be ordered to attend this
20 deposition, that they, they pay for the deposition, and they pay
21 my fees for the deposition. I've already, I blocked off a whole
22 afternoon, I've already paid the Court reporter. Uh but for her
23 comment we would have completed this deposition already.

24 COURT: Well give me just a minute and let me make sure.
25 So you're asking that I award attorney's fees, if I grant the

1 Motion to Terminate, that I award attorney's fees for you having
2 to reappear at another deposition, and pay, and that they also
3 pay for the Court reporter services for that is that what you're
4 asking?

5 OSWALT: I think if you deny their motion then I'm
6 entitled to attorney's fees and you can order her to pay for the
7 next deposition.

8 COURT: And you're asking for attorney's fees for this
9 hearing on the Motion to Terminate?

10 OSWALT: No, all I'm asking for is that she pay my fees
11 for the next deposition.

12 COURT: For the next deposition okay that's what I wanted
13 to get clear okay. Are you also asking that she pay the Court
14 reporter's fees?

15 OSWALT: That she pay for the, for the next deposition.
16 I've already paid for the first deposition.

17 COURT: Okay Ms. uhm Reed, I'm not going to rule on the
18 Motion for Sanctions but some of it may fall by the wayside by
19 virtue of what I do today. However, he's got a number of
20 allegations in here that he's just argued uh with regard to
21 events that occurred so I'll hear any response you want to make
22 to what he just said now. And I think that there are two main
23 ones and somebody correct me if I'm wrong but one of them is he
24 said Judge Foy refused to hear your Motion to Continue or
25 Motions to Continue and it's Mr. Oswalt's position that they

1 were not properly calendared. Uh I've heard what Judge Foy had
2 to say on the tape. He doesn't indicate why he's not going to
3 hear them but he just said he wasn't going to hear them. Uhm,
4 and he knew that the deposition obviously was set that
5 afternoon. Uhm, the second argument is that Mr. Oswald's
6 contending that you did not properly uh proceed with your Motion
7 to Suspend the Deposition once the deposition had gotten
8 started. And because of that he wants you to, he wants me to
9 deny the Motion to Terminate and order that you pay the cost of
10 the next deposition and his attorney's fees, is that what you're
11 arguing in a nutshell?

12 OSWALT: Yes ma'am.

13 COURT: Okay, Ms. Reed I'll hear your response to that.

14 REED: Okay, thank you Your Honor. I have a, what I
15 have marked as Defendant's Exhibit Two and these were the
16 correspondence prior to deposition being, uh conducted. Uhm,-

17 COURT: If you'll show those to Mr. Oswald.

18 REED: I have, I've given him a copy of it and-

19 COURT: And do you want those to be received in evidence
20 for the purposes of this hearing?

21 REED: Yes, Your Honor.

22 COURT: Mr. Oswald, do you have any objections?

23 OSWALT: No, Your Honor.

24 COURT: Okay if you'll pass those up. Give me a minute to
25 look at that before you go further. Okay Ms. Reed.

1 REED: Your Honor, as far as uhm Mr. Oswald's uh
2 contention that it wasn't properly noticed, he never made that
3 allegation that it was not properly noticed. I didn't hear
4 anything where he had says that it was not properly noticed.
5 Your Honor, we sent him the calendar request. We sent him a
6 notice of hearing.

7 COURT: Do you have the Calendar Request or Notice of
8 Hearing or the Motion to Continue to be heard?

9 REED: I, yes, Your Honor.

10 COURT: Let's see that's the motion, the original Motion
11 to Continue was filed it was dated April 1st and the Amended
12 Motion was also dated April 1st so, calendar request that you're
13 referring to--

14 REED: I'm referring to the second one my Motion to
15 Continue was done on, on the 1st. The calendar request was also
16 done, the amended one was done on the 1st as well.

17 COURT: Do you have a copy of that?

18 REED: Uhm, -

19 COURT: On those appearing for that. Well here's a
20 notice of hearing dated March the 31st.

21 REED: We tried, we initially tried to calendar for the
22 7th except for that was one of those Grand Jury dates.

23 COURT: Well I've got a notice of hearing that says, is
24 dated March the 31st which actually predates the Motion to
25 Continue on April 1st. Is there another notice of the one you

1 did after March the 31st?

2 REED: I'm looking Your Honor, I believe that we had
3 done-

4 COURT: I mean that obviously was done prior to the
5 motion being filed so--

6 REED: Yes Your Honor that, that is correct. The only
7 calendar request was done on the 31st.

8 COURT: Okay. Go ahead.

9 REED: Your Honor, as to uhm I don't believe that he had
10 raised that prior to the hearing for uhm, for this, that he
11 received the Motion to Continue, he knew that this is what we
12 were trying to do, he received my faxes indicating that, you
13 know, that we had that we did not receive the discovery and that
14 we needed that prior to the deposition being conducted. And
15 Your Honor, I have my uhm my paralegal here that can also state
16 that he, she was told by his assistant that we could have the
17 discovery prior to the deposition being conducted. Uhm, when I
18 realized that that did not appear be the case and we did not
19 have any further uh correspondence or anything other than the
20 notice of, other than the Notice of Deposition. I understood
21 that he intended to take the deposition regardless of what the
22 paralegal had, had stated and I'm prepared to put her, call her-

23 COURT: If you want to call her as a witness you may.

24 REED: If you will, I'll call Dorothy Novak.

25 **DOROTHY NOVAK, being duly sworn, testifies as follows:**

DIRECT EXAMINATION

BY JANET REED:

Q: Would you state for the record your name and address?

A: Dorothy J. Novak, 139 Hubert Blvd. Lot 191 Hubert, North Carolina.

Q: And where are you employed?

A: Attorney Janet Reed as a paralegal.

Q: All right and would you tell the Court about the events that transpired prior to the deposition being scheduled.

A: We got a fax on March 5th from Bobby Jo Cox at attorney Oswalt's office asking that we do a deposition during late March. In response uhm we talked back and forth, me and Bobby Jo about some dates, looked on your calendar, looked on her calendar, on Mr. Oswalt's calendar. Uh April 8th was determined that that was the two days that you both were free. Sent it over to confirm asking if it was acceptable, never got anything back. Sent a fax the 23rd of March saying that, you know, it's not going to be acceptable as we don't have the discovery, we don't have the prior orders, we don't, it's not a good time to have the deposition. Well then later that day or the next day, I'm not really sure what day, but I talked to Bobby Jo.

COURT: Are you referring this exhibit, Number Two?

A: That's yes, yes ma'am that's the first fax that was sent.

COURT: Okay.

A: And then the other ones are in there too. Uhm, later that

1 day or the next day I spoke with Bobby Jo.

2 OSWALT: Objection to anything she said unless she's here.

3 COURT: Sustained.

4 A: So that means I cannot answer, correct? Okay uhm-

5 Q: All right so were you given an indication that the
6 discovery would be forth coming?

7 OSWALT: Objection leading.

8 COURT: Sustained.

9 Q: Was there, was there a condition for the deposition?

10 OSWALT: Objection.

11 COURT: Sustained.

12 Q: Did you receive any responses back to the faxes on the 29th
13 and on the 23rd?

14 A: No we got a Notice of Deposition was sent to us from
15 attorney Oswalt. Then once I received that from you, I sent a
16 fax to Bobby Jo as well as attorney Oswalt stating that you know
17 maybe it was on oversight on their behalf because we had said
18 that April 8th was not going to be acceptable due to the
19 discovery and the discovery we didn't receive as we discussed.
20 And never got anything back with that and here we are today.

21 Q: So you did, did you get anything back in writing?

22 A: No.

23 Q: Did you get a phone call back?

24 A: I did from the March 23rd fax saying that the discovery
25 would be forthcoming.

1 OSWALT: Objection.

2 COURT: Sustained.

3 Q: Based on your conversation, based on your conversation did
4 you believe that, that the-

5 OSWALT: Objection as to what she believes?

6 COURT: Sustained.

7 Q: Based, well after the conversation, did you believe that
8 the deposition was still being held?

9 OSWALT: Objection as to what she believes?

10 COURT: Sustained, do not answer that.

11 Q: So on the 23rd during that conversation what did you state
12 to Ms. Cox?

13 A: That we were in need of discovery prior to the deposition.
14 In response she said-

15 OSWALT: Objection to what she said.

16 COURT: Sustained you can't tell us what she said. That
17 would be hearsay.

18 Q: All right but you stated that the discovery was needed
19 prior to that?

20 A: Prior to deposition correct and the prior orders needed to
21 be signed.

22 Q: Did, at that point, you take the uh the uh April 8th date
23 off of our calendar?

24 A: Yes.

25 Q: Was that based on that conversation?

1 A: Yes.

2 COURT: And that was Bobby Jo what's her full name?

3 A: Cox, Bobby Jo Cox.

4 Q: And then when, when you received the notice of deposition
5 dated March the 25th, then what happened?

6 A: I sent a fax saying that you know, we didn't have anything
7 and that maybe it was an oversight because we had talked about
8 it not being on that day.

9 Q: Okay. Now the initial uhm document that you sent over on
10 the 19th of March 2009, uhm the initial document where you sent
11 over stating that the, the deposition for April 8th was, you
12 know, would be acceptable.

13 A: And it was based on availability of both attorneys. We
14 both said both attorneys would be available on these certain
15 days, let's work out a day, and then I faxed it over saying
16 would this be acceptable.

17 Q: And did you hear a response back to that?

18 A: Not immediately no.

19 COURT: The second fax, was that dated March the 29th?

20 A: 23rd; it was the 23rd.

21 COURT: Okay there's one the 29th also.

22 A: Yes, there's three total, I think.

23 Q: And that was actually sent over on March 30th 2009 at 9:30?

24 A: Correct.

25 Q: The confirmation sheet is attached?

1 A: Correct.

2 Q: Have we been having difficulty with getting the discovery-

3 OSWALT: Objection.

4 COURT: Overruled.

5 A: Yes or if I can answer it.

6 COURT: Yes ma'am.

7 A: Okay.

8 Q: What, what, what have those uhm problems been?

9 A: Up until March 15th we didn't receive anything at all

10 through subpoenas, motion to compels, nothing. We've gotten

11 nothing, until March 15th. We got some bank statements from

12 October, November, and December and-

13 Q: Do you mean April 15th?

14 A: April 15th, I'm sorry yes, April 15th. Uhm, we got some bank

15 statements and some pay stubs and that's all we've received.

16 Q: And were there uh were there two previous subpoenas that

17 were issued?

18 A: Yes.

19 Q: And was there a subpoena issued for uhm for a later term

20 that still has not been complied with?

21 A: Yes, yes.

22 Q: And was there a subpoena for the April 20th term?

23 A: Yes.

24 Q: And has that been complied with?

25 A: No. I believe we asked for an itinerary and proof of

1 income.

2 REED: Nothing further, Your Honor.

3 COURT: Cross examination?

4 CROSS EXAMINATION

5 BY TIM OSWALT:

6 Q: Well Ms. Reed, can't sign subpoenas can she?

7 A: Not to my knowledge, no sir.

8 Q: She'd have to have the Clerk sign subpoenas?

9 A: I do believe so, yes sir.

10 Q: And why is that?

11 A: Uhm, I'm unaware. It was before I was employed there.

12 Q: That's because she would send out subpoenas the day before
13 hearings, is that correct?

14 A: I don't know. That was before I was employed.

15 Q: How many Motions to Quash have been filed in this case?

16 A: I believe one, maybe two.

17 Q: Two, and that's because my client was served uh both times
18 with subpoenas the day before the hearing, is that right?

19 A: I don't know what day she was served, however I know what
20 days they were sent out. They were sent out to the Sheriff and
21 if they didn't serve it till the day before that is not our
22 responsibility.

23 Q: But you were aware that those were served the day before
24 the hearing?

25 A: And they were faxed to your office as well.

1 A: Correct.

2 Q: Have we been having difficulty with getting the discovery-

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4 COURT: Overruled.

5 A: Yes or if I can answer it.

6 COURT: Yes ma'am.

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20 days they were sent out. They were sent out to the Sheriff and
21 if they didn't serve it till the day before that is not our
22 responsibility.

23 Q: But you were aware that those were served the day before
24 the hearing?

25 A: And they were faxed to your office as well.

1 Q: Right. Uh you're asking for the same information that you
2 asked in the uh request for production of documents,
3 interrogatories, is that right?

4 A: Some yes.

5 Q: And none of that's due until May 8th, is that correct?

6 A: Yes.

7 Q: All right we had a hearing in front of Judge Cameron, Judge
8 Cameron said you had twenty days to respond to that discovery,
9 is that not correct?

10 A: Discovery, clarify.

11 Q: Subpoena that you sent out.

12 A: The package-

13 Q: Right.

14 A: In particular.

15 Q: The subpoena that you sent asking for her pay stubs, is
16 that not correct?

17 A: He said twenty days from the order the 27th the date he
18 ordered not the subpoena I don't know if that's the same.

19 Q: When, the order was signed on the 23rd and it was sent to
20 me on the 27th, is that right?

21 A: Correct and it was twenty days from that.

22 Q: Right so you received all that stuff within twenty days
23 from the date I received this order?

24 A: April 15th if that's 20 days.

25 Q: It is isn't it?

1 A: I would assume. I mean it was pretty close.

2 Q: Okay so you've gotten all the discovery is that not
3 correct?

4 A: We did not get all the discovery.

5 Q: Why?

6 A: We have bank statements from October, November and December
7 we have none from January, February, March. We do not have no
8 First Command bank accounts which she has.

9 Q: But those, those come with the discovery that Ms. Reed
10 asked for?

11 A: However it was subpoenaed and ordered in that March 27th
12 order and we didn't receive it.

13 Q: Okay uhm you sent over to my office a date of April 8th to
14 do this deposition, is that right?

15 A: Yes sir.

16 Q: Uh and then after that you sent a letter on the 23rd and
17 this is you, Ms. Novak-

18 A: A fax not a letter a fax.

19 Q: Fax.

20 A: Yes on the 23rd.

21 Q: It says per Ms. Reed after speaking with your client we
22 would like to resolve the outstanding order. So your client
23 didn't want to do this deposition?

24 A: True.

25 Q: Okay.

1 A: Until we had orders and discovery completed.

2 Q: All right, so did you ever receive anything from me other
3 than this notice to take deposition?

4 A: From you directly?

5 Q: Right.

6 A: Any faxes or anything we got was from Bobby Jo.

7 Q: Did you ever get anything indicating that this deposition
8 had been rescheduled or was going to be rescheduled?

9 A: Just the conversation I had with Bobby Jo that we would
10 have everything before the date.

11 Q: You never received any, what I'm asking, did you ever
12 receive anything from me indicating that I was going to
13 reschedule this deposition?

14 A: No sir.

15 Q: All right and when did Ms. Reed file her motion to continue
16 this deposition?

17 A: It was prepared the 30th, 31st time frame, filed around the
18 1st. Unless I see it I can't give you exact dates.

19 Q: Well you would agree that she filed a, a calendar request
20 asking for all pending issues, is that right?

21 A: All pending motions not issues but motions.

22 Q: Well at the time she filed that she had not filed a Motion
23 to Continue the deposition?

24 A: True there was other motions pending though I do believe.

25 Q: Okay but she hadn't filed her Motion for Deposition is that

1 correct?

2 A: Correct.

3 Q: All right and I think our general rules here in Onslow
4 County require you to give ten days notice, is that right?

5 A: I'm not aware, I can't tell you.

6 Q: I mean you, you file the paperwork.

7 A: From what I've known to see, yes.

8 Q: Your general practice is you give somebody ten days notice
9 for a motion?

10 A: Uh calendar request is two weeks, motions I do not know.

11 Q: Okay we never got a calendar request but-

12 A: It was faxed, it was faxed to your office. I faxed it
13 myself.

14 Q: You faxed a calendar request when?

15 A: The day it was prepared, that March 30th, 31st date. It was
16 faxed to your office.

17 Q: You didn't file this motion to, to continue until the 1st.

18 So did you fax me a calendar request that day?

19 A: No sir, it was faxed the day prior.

20 Q: So you faxed the calendar request prior to filing the
21 motion?

22 A: It wasn't filed at the courthouse at the time I sent it to
23 you.

24 Q: Okay.

25 A: It was filed at the courthouse the day after. It gets sent

1 out before it's filed.

2 OSWALT: That's all.

3 **REDIRECT EXAMINATION**

4 **BY JANET REED:**

5 Q: Ms. uh Novak, uh you're familiar with Rule 6 of the North
6 Carolina Rules of Civil Procedure?

7 A: A little yeah.

8 Q: And you're aware that for motions that uhm that they can be
9 served not later than five days before the specified date of the
10 hearing?

11 A: If that's what the rule states, yes ma'am.

12 Q: Okay.

13 REED: Nothing further, Your Honor.

14 COURT: Mr. Oswald?

15 **RECROSS EXAMINATION**

16 **BY TIM OSWALT:**

17 Q: Ma'am, did Ms. Reed have any intent to complete this
18 deposition when she came over to my office?

19 A: Yes sir.

20 Q: Do you know why she up and walked out of it?

21 A: You were asking questions that she didn't have knowledge of
22 and neither did her client and there was no, no idea of what the
23 questions were even remotely about anything that you were
24 talking about. So there was no prior notice of it either.

25 Q: How long have you been a paralegal?

1 REED: Nothing further, Your Honor.

2 COURT: Mr. Oswald?

3 OSWALT: Nothing further.

4 COURT: Thank you ma'am you may step down. Okay Ms. Reed
5 any further evidence you want to present if not I'll hear any
6 further argument you want to make?

7 REED: Yes, Your Honor, I did just-

8 COURT: Bearing in mind that the big, the two big issues
9 that Mr. Oswald has raised I believe to be uh lack of proper
10 notice hearing on your motions to continue and he also contends
11 that you did not file a proper legal procedure for terminating
12 the deposition.

13 REED: Your Honor, as to my reading of Rule 30D.

14 COURT: I've got it so go ahead. Took me a few minutes
15 to locate it but I've got it right in front of me.

16 REED: I did, I believe that I followed what I believed
17 to be uh the rule that I did need to uhm, to make the motion and
18 that was what I did and I calendared because I don't want to go
19 through an ex parte communication with the Judge without giving
20 him prior notice of it. And that was why it was uh why I
21 calendared it as quickly as possible, so that we could get this
22 resolved so that we could move on with the case and get this,
23 and get everything taken care of, Your Honor. Uhm, in my
24 reading I do not believe that, that I'm required to immediately
25 leave the, leave the deposition and go and uh come up to the

1 courthouse and look for a for a judge but to go on ahead and get
2 the motions filed and get them calendared so that there's not
3 uhm any sort of appearance of impropriety. Your Honor, as to,
4 you know, if I was wrong in, in doing that, Your Honor, I would
5 apologize. However, and I would, you know, would uhm would
6 agree, Your Honor, if, you know, if I'm wrong to you know to pay
7 Mr. Oswald's attorney's fees and to pay for the previous
8 deposition that did not go. But not for the new deposition
9 because he still would have to do a deposition regardless.
10 There are still items that are still outstanding which is what
11 brought us here today. There's still the ED affidavit, there
12 was still the ED affidavit. So that there would have had to
13 have been another deposition that would have had to been
14 scheduled anyway if we didn't have all the, all the necessary
15 evidence in which to go forward, Your Honor. I, I know that I
16 was very frustrated with all, with everything that was, that was
17 going on and I did have the intent to go on ahead and to do, uhm
18 the deposition. I was hoping that things would have, you know
19 would have worked out. Uhm, you do have a copy of the
20 transcript included in his motion for the sanctions. It was not
21 my intention to try to uhm delay anything, we just want to do
22 things in good order, Your Honor. We just want to make sure, as
23 I said, my paralegal when she said sent the first letter she
24 just asked about just the dates. Uh she didn't get a response
25 back and then sent back the additional uh faxes. Your Honor, we

1 believe that that was in bad faith. And yes I did agree to the
2 stipulations and the standard stipulations. I did agree to
3 those. I do admit that. And that's, that's just, you know,
4 where I, where, where we are, Your Honor. As far as the notice
5 of uh of that, Your Honor, we believe, I believe that according
6 to uhm, I believe its Rule 5 of Civil Procedure that it's five
7 days notice, ten days is for child support or custody issues,
8 but five days for anything less than that. At least five days.
9 And he had, he had more than then five days notice. Your Honor,
10 we would ask, as I said, that you would grant, it's not really
11 to terminate it but to suspend it. We understand that we need
12 to do the deposition and we would want to do that as soon as
13 possible after the uhm May 8th documents are received. Your
14 Honor, in your consideration you know if you'd like for me to
15 pay for, to pay for it, I have not problem with that.

16 COURT: Thank you.

17 REED: With doing it, thank you.

18 COURT: Well this is unfortunate. It's unfortunate that
19 everybody's here this afternoon is spending more time dealing
20 with this but you're here and so I'll try to make the best
21 decision I can. I'm trying to find the file stamped copies of
22 your Motions to continue. I know they're dated April 1st. I was
23 looking at copies that were actually attached to the Motion for
24 Sanction so. Uhm, I don't know if they were filed April 1st or
25 when. Okay looks like they were filed actually on April 2nd and

1 signed April 1st. That's the amended motion though, I'm
2 checking the original motion. The original hmm, okay, the
3 original Motion to Continue appears to be signed April 1st and
4 filed April 1st. And the Amended Motion to Continue is also
5 dated April 1st and filed though on April 2nd is what it looks
6 like. And the notice of hearing that indicated that all pending
7 motions were to be heard was filed, dated and filed on March the
8 31st.

9 REED: Your Honor, also I just wanted to bring to your
10 attention to under 30(d) it says upon demand of the objecting
11 party or deponent the taking of the deposition shall be
12 suspended for the time necessary to make the Motion for an order
13 and that was what we did, uh in trying to comply with the uhm
14 with the rule.

15 COURT: Well it's my belief that Rule 30 Subsection (d),
16 that the intent of that rule which is entitled "Motion to
17 Terminate or Limit an Examination", is that the party wanting to
18 terminate or limit the examination of the deposition uhm,
19 should, and it's intended that they should, try to get a judge
20 to rule on that as soon as possible. Uhm, it says that any time
21 during the taking of the deposition on a motion of a party or of
22 the deponent and upon a showing that the examination is being
23 conducted in bad faith or in such manner is to unreasonably
24 annoy or embarrass or oppress the deponent or party, a Judge of
25 the Court in which the action is pending, or any Judge in the

1 county where the deposition is being taken, may order, before
2 whom the examination is being taken, to cease forthwith from
3 taking the deposition or may limit the scope and manner of the
4 taking of the depositions provided in Rule 26(c). If the order,
5 and of course we don't have one and that's what you're here
6 about today, may terminate the examination it shall be resumed
7 thereafter only upon the Order of the Judge in the Court in
8 which the action is pending. Upon demand of the objecting party
9 or deponent the taking of the deposition shall be suspended for
10 the time necessary to make a Motion for an Order. Uhm, and then
11 it refers to the expense section let me go look at expenses.

12 Well I have that portion of the deposition in front of me, uhm,
13 which reflects what Ms. Reed said when she terminated the
14 deposition. And she said, "At this point, pursuant to Rule 30,
15 I'm making an oral motion to terminate this deposition as we
16 have requested discovery. This deposition is being conducted in
17 bad faith and is done in such a manner as to be unreasonable, to
18 harasses, annoy or oppress the deponent. We were due discovery
19 yesterday. We have not gotten it and we have filed a Motion to
20 Compel. So at this point we are demanding that this deposition
21 be suspended until further orders of the Court." Uhm, and I've
22 looked back to see when she filed her Motion to Terminate
23 Deposition, and the Motion to Terminate was filed on April, it
24 was signed on April the 9th, I'm not sure when it was filed. I
25 don't have the file stamped copy handy. But apparently the very

1 next day she drafted uhm a Motion to Terminate Deposition. So I
2 guess the real issue is whether uh that was timely, pursuant to
3 Rule 30 because it does say, "upon demand of the objecting party
4 or deponent the taking of the deposition shall be suspended for
5 the time necessary to make a Motion for an Order." And she did
6 demand, because she said she was, that the deposition be
7 suspended until further orders of the Court. She didn't say
8 specifically until I can draft a Motion and get it in front of a
9 Judge for it to be heard but uhm I think that's implicit in what
10 she actually said. And in as much as she had already been in
11 Court earlier that day trying to get a Judge to hear her Motion
12 to Continue, uhm I think Ms. Reed was being pretty diligent
13 about what she was doing. So the only question is had she been
14 able to locate a Judge that day or even prior to the day who
15 could hear this Motion to Terminate would the Motion to
16 Terminate have been granted. Well for a Judge to grant it, a
17 Judge would have had to find that it was conducted, the
18 deposition was being conducted in bad faith or in such a manner
19 as to unreasonably annoy, embarrass or oppress the deponent or
20 party, blah, blah, blah. And I've had Ms. Novak up here who's
21 testified about these faxes going back and forth, but the last
22 one was on, the last one was on March the 29th where she
23 indicated there, maybe there was some misunderstanding about the
24 deposition going forward and of course at that point she knew
25 the deposition was scheduled and everything was in place for it

1 to happen. And uhm, and then Ms. Reed files her Motion to
2 Continue but doesn't do a notice of hearing on the Motion to
3 Continue and a Judge didn't want to hear it at the last minute
4 on the very day the deposition's being heard, so there we are.
5 Uh well I don't know what your, Mr. Oswalt, your paralegal or
6 secretary or whoever, whatever her title is would say if she
7 were here about what communication she had with Ms. Novak but
8 uhm there have been some communication problems in this case.
9 And not just about the deposition but apparently about a number
10 of other things, but anyway. Okay having said all of that give
11 me just a minute and I'll tell you what my decision is. Well
12 Mr. Oswalt, I'm going to ask you to draft the Orders.

13 OSWALT: Yes ma'am.

14 COURT: I'm going to deny the Defendant's Motion to
15 Continue Deposition. It's kind of weird that I'm doing that
16 because the deposition's already, had, didn't, was not completed
17 on April the 8th but it began so I'm not sure but what that is
18 moot, but at any rate. Uhm, be that as it may I'm going to make
19 a ruling on it that we can put on record so I'm going to deny
20 the Motion to Continue Deposition. And I'm going to deny it on
21 the basis that the uhm Defendant failed to serve notice of
22 hearing on the Plaintiff of the hearing of those Motions. And
23 the reason I'm making that decision is there was a Motion of
24 hearing that was filed on March the 31st but Defendant's
25 original Motion to Continue Deposition which is dated April 1st,

1 was filed April 1st. Defendant's amended Motion to continue
2 deposition, which is also dated April 1st, was not filed until
3 April 2nd, and no Motion of Hearing, no Motion of Hearing was
4 served after the date of uh, the date on those respective
5 motions, either the actual date they were prepared or the filing
6 date so no motion--Notice of Hearing was served after the filing
7 of the Motions to Continue. And that's why I'm going to deny
8 the Motions to Continue. I have no idea what somebody else might
9 have done with those if they've been calendared properly, etc,
10 but at any rate that's the reason I'm going to deny it. Now,
11 the Motion to Terminate Deposition is another matter. Uhm, I'm
12 going to find that the Motion to Terminate Deposition has been
13 properly made under Rule 30(d), in that the Defendant indicated
14 that she, Defendant's attorney, indicated that she was demanding
15 that the deposition be suspended until further orders of the
16 Court which implies that she needed an opportunity to make a
17 Motion, or to draft, well let me say make, to make a Motion to
18 Terminate the proceedings before a Judge and obviously needed
19 time to do that. She in fact drafted a Motion the very next
20 day. So I'm finding that she properly, has properly made her
21 Motion to Terminate so then the issue becomes whether the Motion
22 should be granted or not because it was properly made. I'll
23 hear any further brief argument that either one of you wants to
24 make about whether the Motion to Terminate should be granted.
25 And obviously the basis for it to be granted is and you said

1 this at the deposition but it's your burden of proving it uhm
2 that the Motion has to be based upon a showing that the
3 examinations conducted in bad faith were in such manner as to
4 unreasonably annoy, embarrass or oppress the deponent or
5 parties. So anything further you want to say about that Ms.
6 Reed?

7 REED: Yes, Your Honor. My client is not here so he's
8 not able to, to testify uh it's the part that was due to the box
9 not having, you know, there was already an order entered that
10 said that we were supposed to get the box. We did not get the
11 Discovery. Your Honor, my client felt from what he, from what
12 he relayed to me was that he felt as though the purpose of it
13 was to annoy, embarrass and oppress him.

14 COURT: Okay, thank you.

15 REED: Thank you, Your Honor.

16 COURT: Anything further, Mr. Oswalt.

17 OSWALT: Judge, if you read the pleadings, this is a
18 contested custody case. But he's asking to be awarded primary
19 custody of a four year-old-girl that my client currently has
20 custody of. I noticed him for a deposition. Uh we moved
21 forward with it, he agreed, Ms. Reed agreed on his behalf the
22 standard stipulations that there wouldn't be any objection to
23 it. Uhm, everything was done in, in good faith. We did not, he
24 didn't have any plans to go anywhere, didn't have any vacation,
25 didn't have to come from, he's local. Her contention that the

1 discovery wasn't presented to him has no bearing on this, you
2 know, because I'm going to ask him questions about stuff that I
3 need to know. And what he has inquired from my client has
4 nothing to with his deposition. Nothing to do with it. Somehow
5 they believe if they had gotten my client's discovery that they
6 had requested, they would be prepared for all of these line of
7 questioning. But, but they never asked my client any of that.
8 Uh Judge, and Ms. Reed's contention that he would have been
9 deposed anyways makes no sense. I mean she's not going to
10 depose her own client based upon the discovery that I give her
11 and she requested it. That just doesn't make sense. Uh you can
12 read what took place in the deposition. None of that was done
13 in bad faith. I was polite to him, I, I asked him questions.
14 It, it was a standard deposition. Nothing was done out of the
15 ordinary until I asked a question he wasn't prepared for. I,
16 I'm sorry but that's my job is to gather information. If he
17 wasn't prepared that in itself is not bad faith, that is not
18 unreasonable, that's not oppressive. Uh I don't think they were
19 prepared for the deposition but that doesn't make it
20 unreasonable or in bad faith on my part. So I would ask that
21 you deny her Motion to Terminate the Deposition.

22 REED: Your Honor, based on that I would still, I would
23 state though that we would still have had to have had another
24 deposition because we still had not exchanged the ED affidavit.
25 There were still things that we would still have to deal with so

1 the deposition would not have been able to fully go through that
2 date. And his answers probably would have changed based on the
3 fact that there were things that he did not know.

4 COURT: Thank you. Okay I'm going to deny the Motion to
5 Terminate. And again Mr. Oswalt, I want you to draft this
6 Order.

7 OSWALT: Yes ma'am.

8 COURT: Uhm, and I'm going to find that the, in denying
9 the Motion to Terminate, I'm going to find that the Defendant
10 appeared for the deposition, that he answered a number of
11 questions, uhm I'm not sure how many and I don't want you to
12 have to count them. Uhm, I'll just say that he answered
13 numerous questions; that he appeared at the deposition, that he
14 answered numerous questions knowing that he had not received
15 discovery. And apparently he did not want to continue with the
16 deposition only at the point when he was asked about uh his
17 wife's discovery of an internet relationship that he might be
18 having with someone. I'll conclude that the deposition was not
19 conducted in bad faith and was not done in such a manner as to
20 be unreasonable or to harass, annoy or oppress the deponent.
21 And I will order that the Defendant pay the expense of the
22 partial deposition that took place on April 8th to include Mr.
23 Oswalt's attorney's fees. Mr. Oswalt, I don't know if you can
24 tell me what the cost of that partial deposition was?

25 OSWALT: I don't have it with me at this point in time,

1 Your Honor.

2 COURT: Okay well are you both in town tomorrow or is
3 somebody going to a CLE?

4 OSWALT: Judge, I think we're both in front of you
5 tomorrow.

6 COURT: Oh you're both on the case I have tomorrow,
7 wonderful. Mr. Oswald and Ms. Reed, I'd like not to leave any
8 loose ends if I can help it for some other Judge to have to deal
9 with, in particularly in this case I would prefer not to leave
10 loose ends. Is there any chance tomorrow when you come that you
11 can uhm have an affidavit of your attorney's fees as well as the
12 cost of the Court reporter-

13 OSWALT: Yes ma'am.

14 COURT: For the deposition?

15 OSWALT: Yes ma'am.

16 COURT: Okay so tomorrow then I'll set the attorney's
17 fees and the cost of the deposition. I don't know if you can
18 get the rest of the Order drafted. If you could get everything
19 else drafted and have a blank in it that would be wonderful for
20 me to fill in but you tell me, its 4:30 almost so. I've been
21 pushing people all week to get me Orders; I know you saw me
22 pushing Ms. Reed earlier to get that one signed in that other
23 case.

24 OSWALT: Uhm, I will certainly try to have something for
25 you. I-

1 COURT: And Ms. Reed let's see, I'd ask you to draft the
2 Order and which is, should be short, sweet and to the point, and
3 if you could bring that to me tomorrow I'd appreciate it on your
4 Motion for Real Estate Property Appraisal. Uhm, all I said was
5 that both parties were to share in the cost of the appraisal
6 equally and it's to be done prior to financial mediation so.
7 And then Mr. Oswalt, I needed you to draft an Order extending
8 the time for serving the ED inventory affidavit-

9 OSWALT: Yes ma'am.

10 COURT: -to May the 8th, 2009. And then the only other
11 Order would be the one that I've just done on this Motion to
12 Terminate and the Motions to Continue so. Well I guess I'll see
13 you all in the morning.

14 REED: Your Honor this should--

15 COURT: Oh wait a minute, wait a minute I've overlooked
16 something. Give me a minute. Okay I've uhm I've denied the
17 Motion to Terminate. So it says if the Order makes, made, if
18 the Order made terminates, the examination shall be resumed
19 thereafter only upon an Order of a Judge in the Court in which
20 the action's pending. It doesn't talk about what happens if the
21 Order's denied and it's not denied at the time of the, taking of
22 the deposition and that's where we are, because the deposition's
23 been terminated by virtue of you and your client leaving. And
24 so I think I probably need to Order that the deposition resume
25 on a date and time to be agreed upon by the parties. And I hope

1 that you all be able to do that but please include that in my
2 Order because this deposition obviously needs to be completed.

3 OSWALT: I would --

4 COURT: Each party is to bear his or her own expense and,
5 when it's resumed.

6 OSWALT: Judge, I'll be asking that that resume next week
7 so, preferably Thursday. I don't have any Superior Court, I
8 don't-

9 COURT: Well if we can get a date and time that would be
10 great if you all can do that right now so there's no question
11 about it later. Ms. Reed?

12 OSWALT: I would prefer to do it next Thursday. I don't
13 have any Superior Court and I don't have any Domestic Court.

14 COURT: Does that work for you, Ms. Reed?

15 REED: I do not believe that it does, Your Honor. I
16 don't have my calendar. I don't have my calendar with me. Uhm,
17 Your Honor, I would ask that this be conducted after the,
18 because again we still will have the ED issue that we still have
19 to do.

20 OSWALT: I'm not quite following Ms. Reed. Judge, as far
21 as deposition I'm deposing her client, she hasn't requested a
22 deposition of mine.

23 REED: I mean I did but I didn't do the uhm I didn't do
24 the notice of deposition.

25 COURT: Well why is Thursday not good for you?

1 REED: I'll have to check with, let me check with my
2 office and find out what we have.

3 COURT: Put in the Order that the Court orders that the
4 deposition resume on and leave a blank for me to fill in for the
5 date at and leave a blank for me to fill in for the time and Ms.
6 Reed and Mr. Oswalt I expect you all to be in here in the
7 morning with dates and times to propose so that we can set
8 those.

9 OSWALT: Yes, Your Honor.

10 COURT: Okay, thank you.

11 REED: I know my client is out of state right now.

12 COURT: I'll bet you can contact him.

13 REED: Yes, Your Honor, I can.

14 COURT: Okay because he's probably eager to know what's
15 happened today. Because I don't want you all to be in this
16 situation again and some other Judge to have to deal with it.
17 Okay you all have a good evening.

18 OSWALT: You too, Your Honor.

19 COURT: I'll see you tomorrow.

20 REED: When will your client be available for
21 deposition?

22 OSWALT: Preferably when there's no school, that she's
23 missed a number of days at school.

24

25

C E R T I F I C A T I O N

STATE OF NORTH CAROLINA

COUNTY OF ONSLOW

I, Janet M. Williams, a transcriptionist and notary public in and for Onslow County, North Carolina, do hereby certify that the foregoing 78 pages are an accurate transcript of the proceedings taken in the before-mentioned case, the same having been heard before the Honorable Joyce A. Hamilton, Judge Presiding, commencing on April 30, 2009, the same having been recorded during the proceedings and transcribed by me personally.

I further certify that I am not financially interested in the outcome of this action, a relative, employee, attorney, or counsel of any of the parties, or am I a relative or employee of such attorney or counsel.

This 8th day of September, 2009.

JANET M. WILLIAMS
NOTARY PUBLIC
ONSLow COUNTY
NORTH CAROLINA



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